



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-4444

Re: Payment of traveling expenses
of agent of Governor appointed
to return fugitives from jus-
tice to Texas.

Your letter of February 18, 1942, states that you de-
sire the opinion of this department upon the following question.

May the expenses of an employee of the De-
partment of Public Safety traveling as the agent
of the Governor of Texas to the State of Califor-
nia to return to Texas fugitives from the justice
of this State be paid from the appropriation made
to the Department of Public Safety for traveling
expenses?

Our Code of Criminal Procedure, Article 1005, pro-
vides with respect to the return of fugitives from justice:

"When the Governor deems it proper to de-
mand a person who has committed an offense in
this State and has fled to another state or ter-
ritory, he may commission any suitable person
to take such requisition. . . ."

Code of Criminal Procedure, Article 1006, provides:

"The officer or person so commissioned shall
receive as compensation the actual and necessary
traveling expenses upon requisition of the Gover-
nor to be allowed by such Governor and to be paid
out of the State Treasury upon a certificate of
the Governor reciting the services rendered and
the allowance therefor."

The appropriation bill for the current biennium pro-
vides the sum of \$5,000.00 per fiscal year for the Governor to
defray the "expenses of returning fugitives from justice."
(Acts 47th Legislature, Regular Session, page 1158.)

In the case of *Brightman v. Sheppard*, 122 Tex. 318, 59 S.W. (2d) 112, the Supreme Court of Texas held that under the provisions of Article 1006, above quoted, an officer or private person commissioned by the Governor to return a fugitive from justice to Texas is for the purposes of the services rendered in that connection the agent of the Governor, and must look to the Governor for his compensation, to be determined by the Governor under the provisions of Code of Criminal Procedure, Article 1006.

We, therefore, hold that the actual and necessary traveling expenses of the employee of the Department of Public Safety, if he traveled to California under the commission of the Governor as the Governor's agent to return to this State such fugitives from justice, are to be paid from the appropriation provided the Governor for returning fugitives from justice, upon the certificate of the Governor reciting the services rendered and the allowance therefor.

Our Opinion No. O-3470 is not applicable to the instant situation. In that case, the traveling expenses of the employee of the Department of Public Safety were not incurred as the agent of the Governor, since extradition proceedings were not instituted, the fugitive having waived extradition.

In respect to the traveling expense account under consideration, we think it advisable to observe that consultation with members of your department and an examination of the expense accounts submitted for payment reveals that it is not clear that the trip was made by the employee of the Department of Public Safety as the agent of the Governor. Though the employee appears to have assisted other officers in returning the fugitives involved to Texas, the expense account reveals that he conducted an investigation in California. Since it is competent for the Department of Public Safety to send their agents out of the State for the purpose of conducting investigations of crimes alleged to have been committed in this State, the traveling expenses of the employee, if he did not travel as the agent of the Governor, may be paid from the appropriation made to the Department of Public Safety, and the fact that he may have assisted the agent of the Governor in returning the fugitives from justice will not defeat that payment.

Honorable George H. Sheppard, page 3

0-4444

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/R.W. Fairchild
R.W. Fairchild
Assistant

RWF:LM:wc

APPROVED MAR 5, 1942
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman